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## Regime Theory

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OXFORD PUBLIC INTERNATIONAL LAW

## Max Planck Encyclopedia of Public International Law



### Regime Theory

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## A. Notion

**1 Regime theory** is an approach within international relations theory, a sub-discipline of political science, which seeks to explain the occurrence of co-operation among States by focusing on the role that regimes play in mitigating international anarchy and overcoming various collective action problems among States (International Relations, Principal Theories; State; see also Co-operation, International Law of). Different schools of thought within international relations have emerged, and various analytical approaches exist within the **regime theory** itself (see Sec. F.3 below). However, typically **regime theory** is associated with neoliberal institutionalism that builds on a premise that regimes are central in facilitating international co-operation and constraining the behaviour of States. Thus, in international relations literature, **regime theory** is often used interchangeably with the terms 'institutionalism' or 'neoliberal institutionalism'.

### 1. Definition of a 'Regime'

**2** While the precise definition of a regime is debated, a regime is most commonly understood to refer to a set of 'principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner 2), as Stephen Krasner has suggested. A regime creates convergence of expectations, establishes standards of behaviour, and cultivates a general sense of obligation. Regimes mitigate anarchy that would otherwise prevail in international relations and thereby facilitate co-operation among States and other potential actors. International regimes should not be seen as quasi-governments (Governments), the purpose of which would be to create a centralized authority to govern world politics. It is more accurate to think of regimes as institutions involving States—and increasingly also non-State actors—who seek to realize their long-term objectives and structure and stabilize their relations to the benefit of all the members of the regime.

### 2. Different Types of Regimes

**3** Regimes exist in various domains of international politics. There are, for example, collective security regimes (including United Nations [UN] norms, principles, and procedures constraining the use of force in foreign affairs; Use of Force, Prohibition of), economic regimes (including international trade regime and international monetary regime; International Bank for Reconstruction and Development [IBRD]; International Monetary Fund [IMF]; *World Trade Organization [WTO]*), human rights regimes (including the European Convention for the Protection of Human Rights and Fundamental Freedoms [1950] and various international treaties and customary norms protecting civil, political, economic, and social rights), and environmental regimes (including regimes protecting biodiversity or regulating emissions; Biological Diversity, International Protection; Environment, International Protection; see also Emissions Trading).

**4** Regimes are traditionally thought of as being composed of States. More recent studies of regimes, however, acknowledge that regimes comprising non-governmental organizations or individuals can also guide and regulate the behaviour of States and various non-State actors (firms, groups, individuals).

### 3. Distinguishing International Regimes from International Agreements and International Organizations

**5** Robert Keohane, who has shaped the study of international regimes probably more than any other scholar, has distinguished regimes from international agreements. Regimes are often created when there are potential gains from agreements but when agreements are costly or difficult to reach. Instead of pursuing negotiations on an ad hoc basis, agreements can be nested within a more comprehensive regime that can facilitate the negotiation of, and compliance with, the agreement. This is especially true when issue density—the number and importance of interrelated

issues within a given policy space—is high. While ad hoc agreements might be adequate to deal with low issue density matters, there are likely to be important economies of scale associated with an international regime when issue density is high.

**6** Regimes should also be distinguished from formal international organizations (International Organizations or Institutions, General Aspects). While many regimes are accompanied by formal organizations, they can also consist of a looser set of norms, principles, and procedures that shape States' expectations and guide their behaviour. The International Atomic Energy Agency (IAEA), for instance, is an international organization that forms part of a more broadly understood nuclear non-proliferation regime, which again belongs to a broader collective security regime (Non-Proliferation Treaty [1968]). Similarly, the WTO is a part of a larger trade regime that encompasses rules, norms, and principles in addition to the procedures and the organizational capacity that the WTO provides for the regime. Trade regime, on the other hand, is nested within a broader international economic regime. International regimes can also be distinguished from international organizations by thinking of regimes as being restricted to a particular issue-area of international relations (eg collective security, economic relations) whereas an international organization (including, for instance, the UN), can have a sphere of activity that spans various different issue areas. However, the studies of regimes and international organizations are closely related and often overlap.

## **B. Regime Theory's Underlying Assumptions about the State System**

**7 Regime theory** regards States as principal actors in world politics. States are assumed to be rational, unitary actors who seek to maximize their national self-interest. Rationality means that States have ordered and consistent preferences that lead them to pursue policies that maximize their individual utility. These assumptions are shared with a realist paradigm of international relations (see Sec. F.3. (a) below).

**8** Unlike realism, **regime theory** emphasizes that States' interests are not necessarily conflictual. International politics is not a zero-sum game where a gain for one State would necessarily mean a loss to another State. States are assumed to be motivated by absolute instead of relative gains (see Sec. F.3. (a) below). States often have common interests with other States and engage in co-operation with one another to pursue joint gains. Common interests do not mean that States' interests would be identical. Instead, co-operation takes place when States mutually adjust their policies in situations where they have both conflicting and common interests. States consider future consequences of their present actions and adopt a long-term view to interaction with other States. When States perceive that there are benefits from co-operation, they are sometimes willing to forego their short-term interests to accomplish their common interests in the long term.

**9 Regime theory** acknowledges that regimes are significant in facilitating co-operation among States, and capable of exerting independent influence on them. The presence of regimes modifies anarchy that would otherwise prevail in international relations. The distribution of capabilities among States, while not irrelevant, is not the only determinant of international outcomes. In addition to power, regimes matter.

## **C. How Do Regimes Enhance the Likelihood of Co-operation and Compliance with International Law?**

### **1. How Do Regimes Facilitate the Making of Commitments?**

**10** Regimes facilitate international commitments by reducing transaction costs through

institutionalizing co-operation and thereby decreasing the costs of future agreements. When international trade agreements, for instance, are agreed upon in the WTO framework, States can rely on the regime's established procedures and principles that guide the negotiation[s]. In this way States can avoid the costs of creating new rules each time a new agreement is negotiated.

**11** States often lack information relating to the outcomes of co-operation, risks involved, and the preferences of other States. This type of uncertainty may prevent States from accomplishing a mutually beneficial agreement. By providing information and facilitating communication among States, regimes can alleviate uncertainty and thereby increase the likelihood of co-operation.

**12** An agreement in the framework of a broader regime creates conditions for reciprocity by allowing for issue linkages that can be employed to compensate parties that would lose from the agreement. Negotiating parties may seek strategic linkages to broaden the scope for an acceptable compromise in situations where gains within a given issue area are asymmetrically distributed and, consequently, where no agreement can be reached on a single issue alone. A successful strategic linkage is able to offset the negative distributional consequences that would arise if the agreement was constrained to a single issue area. By broadening side-payments that are available, a distributive (win-lose) bargaining game can be converted into an integrative (win-win) bargaining game.

**13** Regimes also enhance the continuity of co-operative relationships among States. This creates conditions for diffuse reciprocity. Unlike in non-iterated negotiations where States seek immediate benefits consistent with specific reciprocity, diffuse reciprocity refers to a continuing (iterated) relationship of exchange that at any given time may not be reciprocated, but where States' co-operative actions will be repaid and balanced in the long run. This makes it easier to strike a deal in negotiations even when instant benefits for all parties are not available.

**14** Regimes are also effective in curtailing domestic opposition to a particular international agreement. International regimes can be employed to lock in gains from international co-operation vis-à-vis not only other negotiating parties but also regime supporters' domestic opponents and future governments.

## **2. How Do Regimes Facilitate the Compliance with Commitments?**

**15** The fear of being exploited by other States forms an impediment to international co-operation. Regimes can mitigate this fear by decreasing the likelihood of cheating once the agreement is reached. By monitoring the behaviour of members of the regime, regimes ensure that non-compliance by any given party is brought to the attention of other parties. Regimes therefore make commitments more credible and cheating less likely.

**16** Iteration lengthens the shadow of the future, reducing the incentives to defect from agreed commitments. Knowing that one State's defection is likely to be retaliated against by a mutual defection of another State in the subsequent round of interaction, each State has the motivation to comply with its obligations in the first place.

**17** When States know that their relations will continue in subsequent instances of interaction, the importance of reputation increases. Regimes help to augment or reduce the reputation of each State by providing standards of behaviour against which States' conduct can be assessed. By reneging on commitments under a regime, a State diminishes its reputation as a trustworthy partner, undermining simultaneously its potential future gains from co-operation. Conversely, a State that earns a reputation of adhering to its commitments can expect other States to be willing to engage in co-operative arrangements with it in the future.

**18** Strategic linkages facilitate not only the making of commitments but also States' compliance with them. When issues are linked, States have fewer incentives to renege on their commitments as

non-compliance in one issue area can negatively affect their goals in another issue area.

## **D. Creation of Regimes, Regime Transformation, and Regime Persistence**

**19** Regime formation is most commonly explained by functional reasons. Robert Keohane views regimes as responses to collective action problems that arise from the self-interest of States. When the pursuit of individual interests by States would lead to socially sub-optimal outcomes, rational States eschew independent action and co-operate by forming regimes. In other words, regimes are created because they are expected to enhance the welfare of their creators.

**20** Oran Young has distinguished between spontaneous, negotiated and imposed regimes. Spontaneous regimes emerge when States' expectations converge naturally in the absence of conscious efforts to create a regime. Negotiated regimes involve bargaining and explicit consent on the part of participating actors. Imposed regimes are created when powerful States impose a regime on weaker States by resorting to coercion, co-option, or manipulation of other States' interests or incentives (see also Economic Coercion).

**21** Powerful States frequently have a decisive role in the formation of a regime and the shaping of its content. While rejecting the hegemonic stability theory in its purest form (Hegemony; see Sec. F.3. (a) below), **regime theory** acknowledges that regimes are created against the backdrop of the distribution of power among States. However, once created, regimes are likely to create a dynamic of their own.

**22** Regimes are rarely static constructs and can transform as a result of both internal and external forces that affect some essential elements of the regime. Changing economic, political, and social factors as well as shifts in a regime's underlying power structures and possible internal contradictions can transform a regime. Regimes frequently continue to persist despite the changes they undergo. Regime persistence is often explained by the costs involved in establishing a regime. Creating a new regime in response to new conditions would entail various learning and other start-up costs, making it rational to remain involved with an existing regime. This also leads to path dependence, as increasing returns on scale can be exploited by adding more issues to an existing regime, especially when the regime has a relatively good track record of facilitating international co-operation.

## **E. Evolution of Regime Theory**

**23** International institutions have been studied extensively since their proliferation, especially following World War II. In the post-war world, the studies focused first on formal international organizations. By the 1970s international relations scholars turned their attention to international regimes more generally. This shift in the research agenda represented an attempt to analyse international co-operation and governance more broadly. In the 1980s, the work of Robert Keohane and his neoliberal, functional explanations for the creation and maintenance of regimes provided lasting contributions to the debate on international regimes.

**24** **Regime theory** emerged as a challenge to the realist school of international relations (see Sec. F.3. (a) below). Following two world wars, States' inability to limit war in their international relations had become obvious, heightening the need for increased international co-operation. Regime theorists viewed the realists' focus on State power and interest as too narrow, emphasizing common interests shared by all States and their growing interdependence among one another.

**25** Realists responded forcefully to the rising study of regimes. They challenged some of the central assumptions of **regime theory** and prompted an intense debate on whether regimes in fact have any independent effect on States' behaviour. Among other questions, the debate

focused—and often still focuses—on the nature and consequences of anarchy, the likelihood of the occurrence of international co-operation, the relative importance of absolute versus relative gains, and the priority of State goals (economic welfare versus security). Realists claimed that the distribution of capabilities continues to determine the likelihood and the form of international co-operation and that the regimes have little relevance independent of State power. **Regime theory**'s theoretical appeal was nonetheless strengthened after the end of the Cold War (1947–91) when some of the realists' predictions failed to materialize. Many realists had argued that the European integration was largely a result of the United States-Soviet Union bipolarity and predicted that the European regime would wane as a result of the collapse of one of the super powers and the subsequent withdrawal of the United States from Europe. As this did not happen, **regime theories** claimed that institutionalized co-operation can indeed sustain in the absence of a hegemony.

**26** The mainstream **regime theory** is firmly rooted in the rationalist tradition. Thus, throughout its evolution, economic theories focusing on the role of information and transaction costs have influenced the work of regime theorists. **Regime theory** also draws on various game-theoretic models developed in economics to illustrate different strategic situations and to predict and explain the likelihood of international co-operation.

## **F. Differences with Respect to Other Approaches to International Law**

### **1. Descriptive and Prescriptive Approaches to International Law Compared**

**27** The principal objective of **regime theory**, like that of other international relations theories, is to explain and predict international outcomes. In seeking to establish causal relationships and ascertain why and how rules evolve and how they influence State behaviour, **regime theory** provides a descriptive policy-analysis. Instead of focusing on the content of international rules, **regime theory** adopts an instrumentalist approach to international law. In contrast, prescriptive approaches to international law focus on formal rules with which States have a legal obligation to comply. Prescriptive analysis seeks to define not only what international law is but also what it ought to be. Prescriptive, rule-oriented approaches to international law include, for instance, Legal Positivism, which emphasizes State consent as a source of international law, and natural law, which holds that international law can be derived from higher principles of right and wrong and is therefore eternally and universally valid (Natural Law and Justice).

### **2. Empiricist and Critical Approaches to International Law Compared**

**28** As an empirical study rooted in the positivist tradition of social science, **regime theory** can be contrasted with critical approaches to international law, including New Stream and feminist theories of international law (Feminism, Approach to International Law; Sociological Theories of International Law). Unlike empirical studies that test hypotheses against evidence and facts, critical approaches follow an interpretive method that is sceptical of objective knowledge. The New Stream approach views law as a discourse and focuses on disclosing the hidden ideologies and structures that lie behind that discourse. The feminist approach to international law seeks to expose the gender bias embedded in existing international legal rules and examines the impact that any such bias has on women.

### **3. Different International Relations Approaches to International Law Compared**

### **(a) How Does the Regime Theory Differ from Realism?**

**29** Regime theory shares many of the analytical assumptions of realism, which also builds on the presumption that States are rational, unitary actors that act in pursuit of maximizing their individual national interests. Both theories hence reflect a commitment to a rationalist research agenda. Realists are, however, considerably more pessimistic about the prospects of international co-operation among egoistic States that operate in an anarchic system. Realists believe that international outcomes reflect the distribution of power among States. Unlike regime theorists, who believe that States engage in international co-operation largely in pursuit of absolute gains, realists have stressed that States are most concerned with relative gains. In other words, while regime theory claims that States care only about their own gains and losses from international co-operation, realists argue that States' willingness to co-operate depends on whether they achieve more gains relative to other States by co-operating.

**30** According to realists, international regimes are merely reflections of prevailing power relations among States. Powerful States create regimes to institutionalize and enhance their power advantages. Regimes are hence epiphenomenal and incapable of affecting State behaviour or mitigating international anarchy. Realists have further argued that the establishment of a regime can be explained by the rise of a hegemonic power. Conversely, the collapse of a regime is explained by the decline of a hegemonic power. This is consistent with the hegemonic stability theory, which postulates that the stability of the international system requires a dominant State to create and enforce the rules of interaction among the members of the system.

### **(b) How Does the Regime Theory Differ from Liberalism?**

**31** Liberal international relations theory contests the State-centric approach of regime theory and realism by focusing on individuals and groups as fundamental actors in world politics. Unlike regime theory, which assumes States to be unitary actors with fixed preferences, liberal theory emphasizes that States' interests are the function of the individual preferences of various sub-State actors operating in society. Liberal theory assumes that a conflict arises when States' interests clash. The way to solve this conflict is to find ways to align State interests by trying to change the preferences of groups and individuals within a State.

**32** Liberal theory assumes that the likelihood of international co-operation is not dependent on the structure of the international system or the existence of a regime. Whether co-operation takes place or not is the function of the degree of convergence of States' domestic interests. If States' interests are aligned, co-operation is possible and it may—but may not—manifest itself in the form of a regime.

### **(c) How Does the Regime Theory Differ from Constructivism?**

**33** Constructivist approach differs both from the regime theory and realism in its presumption that States' interests are socially constituted and endogenous rather than fixed and exogenous. Constructivists believe that interaction among States affects States' interests and identities, which can change as a result of communication and learning that takes place in the international society. Interaction among States builds trust among them, creating stable expectations about others' behaviour. In this process, collective identities become slowly embedded, paving the way for enhanced co-operation. In its focus on the origin of interests, constructivism is complementary to traditional, rationalist regime theory that pays little attention to the actual formation of States' preferences.

**34** Constructivist theory has developed theories on the relationship between regimes and ideas and identities. According to constructivists, a shared identity among States increases the likelihood of regime formation. Regimes shape States' interests by encouraging a convergence of preferences and cultivating a sense of shared identity. Regimes can hence facilitate co-operation



by affecting States' interests and identities. In this particular sense, constructivists can be seen to attribute an even more important role for regimes than neoliberal institutionalists do.

## G. Relevance of Regime Theory in Practice

**35** International relations today are increasingly legalized. States frequently conduct their international affairs in the form of international agreements and co-operate within the framework of formal institutions. There are many instances of international co-operation—including in trade, environment, human rights, and collective security among many other issues—that have been established and that continue to take place within international regimes.

**36** **Regime theory**, like other paradigms of international relations, helps international lawyers to understand patterns of behaviour in inter-State relations. Different international relations theories suggest different legal and political responses to collective action problems that impede co-operation among States. Thus, international lawyers can draw on **regime theory**, among other international relations paradigms, when analysing substantive legal problems and designing legal solutions to solve them.

**37** **Regime theory** helps international lawyers to explain the structure and the function of particular international rules and institutions and analyse the ways international regimes can shape international law and international relations in general. The insights developed by regime theorists can be valuable for lawyers seeking to understand, for instance, why some international agreements are easier to reach than others; how States should structure the process of negotiating international obligations; why some international agreements break down and others succeed; when and why States comply with their legal obligations and, conversely, when and why they fail to do so; how international institutions facilitate compliance with international law; and what type of legal instruments best address particular types of international problems.

**38** **Regime theory** focuses on descriptive questions instead of a normative analysis. The theory seeks to explain and predict State behaviour and international outcomes, leaving aside questions such as what is a legally justifiable way for States to act. It adopts an external as opposed to an internal perspective on law, and its ability to answer normative questions about the content and validity of international law is therefore limited. **Regime theory** cannot replace a legal analysis of the international system but its explanatory powers can be harnessed to generate both theoretical and practical insights that can lead to a richer and more comprehensive understanding of the role international law plays in international relations.

## Select Bibliography

- RO Keohane 'The Demand for International Regimes' (1982) 36 *IntlOrg* 325–55.  
JG Ruggie 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *IntlOrg* 379–415.  
SD Krasner (ed) *International Regimes* (Cornell University Press Ithaca 1983).  
RO Keohane *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press Princeton 1984).  
F Kratochwil and JG Ruggie 'International Organization: A State of the Art on an Art of the State' (1986) 40 *IntlOrg* 753–75.  
KA Oye (ed) *Cooperation under Anarchy* (Princeton University Press Princeton 1986).  
D Kennedy *International Legal Structures* (Nomos Baden-Baden 1987).  
F Kratochwil *Rules, Norms and Decisions* (CUP Cambridge 1989).  
AA Stein *Why Nations Cooperate* (Cornell University Press Ithaca 1990).  
H Charlesworth, C Chinkin and S Wright 'Feminist Approaches to International Law' (1991) 85 *AJIL* 613–45.

A Wendt 'Anarchy is What States Make of it: The Social Construction of Power Politics' (1992) 46 *IntlOrg* 391–25.

DA Baldwin (ed) *Neorealism and Neoliberalism: The Contemporary Debate* (Columbia University Press New York 1993).

V Rittberger (ed) **Regime Theory** and *International Relations* (2nd ed Clarendon Press Oxford 1995).

JJ Mearsheimer 'The False Promise of International Institutions' (1994–95) 19 (3) *International Security* 5–49.

RO Keohane and LL Martin 'The Promise of Institutional Theory' (1995) 20 (1) *International Security* 39–51.

RJ Beck, AC Arend, and RD Vander Lugt (eds) *International Rules: Approaches from International Law and International Relations* (OUP New York 1996).

RO Keohane 'International Institutions: Two Approaches' in RJ Beck, AC Arend, and RD Vander Lugt (eds) *International Rules: Approaches from International Law and International Relations* (OUP New York 1996) 187–205.

RMA Crawford **Regime Theory** in the *Post-Cold War World: Rethinking Neoliberal Approaches to International Relations* (Dartmouth Aldershot 1996).

A Hasenclever, P Mayer, and V Rittberger *Theories of International Regimes* (CUP Cambridge 1997).

AP Rubin *Ethics and Authority in International Law* (CUP Cambridge 1997).

A Moravcsik 'Taking Preferences Seriously: A Liberal Theory of International Politics' (1997) 51 *IntlOrg* 513–53.

BA Simmons and LL Martin 'Theories and Empirical Studies of International Institutions' (1998) 52 *IntlOrg* 729–57.

A-M Slaughter, AS Tulumello, and S Wood 'International Law and International Relations: A New Generation of Interdisciplinary Scholarship' (1998) 92 *AJIL* 367–97.

L Gruber *Ruling the World: Power Politics and the Rise of Supranational Institutions* (Princeton University Press Princeton 2000).

A Hasenclever, P Mayer, and V Rittberger 'Integrating Theories of International Regimes' (2000) 26 *RevIntStud* 3–33.

M Koskeniemi *The Gentle Civilizer of Nations: The Rise and Fall of International Law* (CUP Cambridge 2002).

A-M Slaughter *A New World Order* (Princeton University Press Princeton 2004).

J Klabbers 'The Relative Autonomy of International Law or the Forgotten Politics of Interdisciplinarity' (2005) 1 *JintLIntRel* 35–48.